In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 4466 of 2006

Date of Decision: 01.12.2006

Smt. Veena Shashi

…Petitioner

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Dhirinder Chopra, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana,
for the respondents.

JUDGMENT

M.M. KUMAR, J. (Oral)

This petition filed under Article 226 of the Constitution prays for issuance of the writ in the nature of certiorari for quashing order dated 22.9.2005 (P-11) as well as orders dated 10.11.2005 (P-12 and P-13) passed by respondent No. 2. Still further, quashing of Rule 6(v) of the Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999, has been sought asserting that there is unreasonable classification amongst the employees of private affiliated colleges under the same management and those who

come within different management. A further prayer has been made for directing respondent No. 2 to grant pension and gratuity etc. to the petitioner for the service rendered by her from 16.7.1969 to 30.9.2005 i.e. by taking into account the service rendered by the petitioner from 16.7.1969 to 5.8.1986 at the Dev Samaj College for Girls, Ambala City.

Brief facts of the case are that the petitioner was appointed as the Director of Physical Education w.e.f. 16.7.1969 on probation in the Dev Samaj College for Girls, Ambala City, against a permanent vacancy (P-1). Her appointment was approved by the Vice-Chancellor, Panjab University, Chandigarh, vide letter dated 24.9.1969 (P-3) and she was confirmed w.e.f. 1.7.1972 vide letter dated 30.6.1972 (P-4). It has been asserted that Dev Samaj College for Girls, Ambala City, was getting grant-in-aid against the sanctioned post of the petitioner from the Higher Education Department, Haryana, which was discontinued in the year 1980. On 4.7.1986, the petitioner applied for the post of Director of Physical Education in the Hindu Girls College, Sonepat through proper channel. She was selected and appointed on 3.8.1986 (P-5) by a Selection Committee. It has been stipulated in the appointment order dated 3.8.1986 that the petitioner was to be on probation for a period of one year and the question of her confirmation was to be taken up on demonstration of satisfactory work, conduct and good behaviour. She was to be entitled to provident fund on confirmation.

On 5.8.1986, the petitioner was relieved from the Dev Samaj College for Girls, Ambala City, and she joined her duties on 06.08.1986 as D.P.E. in the Hindu Girls College, Sonepat (P-6). Her services in the Hindu Girls College, Sonepat, were confirmed on 6.8.1988 and her provident fund amount was sent by the Dev Samaj College for Girls, Ambala City to the Hindu Girls College, Sonepat. It has been asserted that the Hindu Girls College, Sonepat was also receiving grant-in-aid against the sanctioned post of the petitioner from the Higher Education Department, Haryana. During the tenure of the petitioner at the Hindu Girls College, Sonepat, her post was re-designated as Lecturer in Physical Education from that of the Director of Physical Education. She retired as such w.e.f. 30.9.2005, and at that time she was drawing super selection grade from the Hindu Girls College, Sonepat.

It is appropriate to mention that the Government of Haryana vide letter dated 8.12.2000 accepted the recommendations of the University Grants Commission (UGC) in relation to counting of past service towards senior scale/selection grade to the lecturers working in the University/Colleges. Subsequently, the Director of Higher Education, Haryana, issued a circular dated 27.2.2001 to all the Principals of Government/Non-Government Colleges of the State intimating about acceptance of the UGC guidelines for counting of past service towards grant of senior scale/selection grade to the Lecturers working in Universities/Colleges under Advancement Scheme w.e.f. 1.1.1986. It has further been informed that by virtue of

State Government's decision, all teachers working in Colleges and Universities of Haryana were to be entitled for the benefit of counting of previous service towards senior/selection grade under the Career Advancement Scheme (CAS) w.e.f. 1986 in accordance with UGC guidelines (P-7). On 28.8.2001, the Higher Education Commissioner, Haryana-respondent No. 2 issued another circular to the Principals of Private/Government Colleges in the State of Haryana thereby intimating that the State Government has agreed to count the service rendered by a Lecturer in a College for the period it remained a non-aided institution, in the similar manner as in the case of aided institution for the purpose of grant of senior scale selection grade (P-8). The following two conditions were, however, to be fulfilled for that purpose:-

> "1. That Lect. was selected in accordance with the prescribed procedure and fulfills the qualifications conditions prescribed by the UGC vide their letter no. P.1.6.90 (P.S. Cell) Dated 27.11.90 notified by Haryana Govt. vide letter No. 1.1.99 Edu-I(I) dated 8.12.2000.
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> 2. That on account of grating of benefit of unaided period towards senior scale and selection grade the financial expenditure prior to the date from which colleges was brought on grant in aid list will be borne by the Management of the concerned college."

The petitioner has represented to respondent No. 3 for grant of pension and gratuity before her retirement by counting the

service rendered by her in the previous college i.e. the Dev Samaj College for Girls, Ambala City (P-9). Respondent No. 3 forwarded the request of the petitioner and other requisite documents to respondent No. 2, vide letter dated 25.7.2005 (P-10). Vide letter dated 22.9.2005 (P-11), respondent No. 2 communicated to respondent No. 3 that the case of the petitioner is not covered by Rule 6 of the Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 and the same was returned in original. Thereafter, vide order dated 10.11.2005 (P-12) respondent No. 2 has sanctioned payment of Rs. 2,59,769/- as gratuity to the petitioner instead of Rs. 3,50,000/- and vide another order of the same date (P-13) respondent No. 2 has sanctioned payment of pension at the rate of Rs. 4,714/- per month to the petitioner instead of Rs. 9,130/-. The above mentioned orders Annexures P-11 to P-13 are the subject matter of challenge in the instant petition.

After filing of the written statement, the petitioner was allowed to file replication in order to rebut the stand of the respondents. It has been asserted that the petitioner vide her letter dated 11.6.2006 (P-14) had requested respondent No. 3 to pay back the contributory provident fund received by her from Dev Samaj College for Girls, Ambala City, at the time she was appointed in Hindu Girls College, Sonepat. However, respondent No. 3 declined the request made by her. It is claimed that persons similarly situated like Mrs. Veena Luthra, Officiating Principal, Shri K.C. Kaushik, Principal, Shri S.C. Gupta, Lecturer and Shri H.P. Bhardwaj, Lecturer

of the Hindu Girls College, Sonepat, who had earlier withdrawn contributory provident fund, were permitted the benefit of the rules and were allowed to redeposit the contributory provident fund.

In the written statement respondent Nos. 1 and 2 have taken the stand that benefit of Rule 6 of the 1999 Rules could not be granted to the petitioner firstly because Dev Samaj College for Girls, Ambala City was getting grant-in-aid from the Government till 1980. Secondly, the amount of Rs. 16,296/- and 13,450/-, which was received by the petitioner from the Dev Samaj College for Girls, Ambala City, towards Contributory Provident Fund, was not deposited by her in the provident fund account of the Hindu Girls College, Sonipat. It has been asserted that from 1981 to 1986 the Dev Samaj College for Girls, Ambala City, was not receiving any grant-in-aid from the State of Haryana and, thus, the petitioner is not entitled to the benefit of previous service rendered by her in that institution. It has further been asserted that only the service rendered by an employee on aided sanctioned post in any aided colleges in the State of Haryana is to be counted for the purpose of qualifying service for the award of retiral benefits specified in the Rules.

After hearing learned counsel for the parties we are of the view that the instant petition merits acceptance. The conditions of service of the petitioner for the grant of pension etc. are governed by the Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 (for brevity 'the Rules'). Rule 6 of the Rules

relates to qualifying service and Rule 8 deals with Entitlement for pension, which are reproduced as under:-

> "6. Qualifying Service:- The Service of an employee shall qualify for retirement benefits under these rules as under:-
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> (i) The service rendered on attaining the age of 18 years on approved post admitted for grant-in-aid.
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> (ii) The service rendered uptill the attainment of superannuation age of sixty years;
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> (iii) The leave admissible under the Haryana Affiliated Colleges (Security of Service) Rules, 1979 and under instructions issued by the Government from time to time, excluding the leave without pay and period of suspension, overstayal of leave not subsequently regularised and period of break in service.
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> (iv) Service rendered in one or more private affiliated colleges, receiving grant-in-aid under the same management.
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> (v) Service rendered on aided sanctioned post in any aided college in the State of Haryana.
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> Provided that the official has been appointed through proper channel on aided sanctioned post and the approval of continuity of service has been obtained from the Director.

> Provided further that the contributory Provident Fund account of the employee in the previous college continued as such in the subsequent college to which he is transferred or appointed and there is no break in service or the service condition as modified by the Government from time to time."
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> "8. Entitlement for pension:- An employee shall be entitled for Pension under these rules only after he completes ten years qualifying service." (emphasis added)

A perusal of Rule 6(iv) & (v) of the Rules would show that service rendered by an employee in one or more private affiliated colleges receiving grant-in-aid under the same management, would be treated as qualifying service. Similarly, service rendered on aided sanctioned post in any aided college in the respondent State is to be treated as qualifying service. There are few conditions imposed by the proviso, namely, that the appointment has been made through proper channel on aided sanctioned post and approval of continuity of service has been obtained from the Director. A further condition has been imposed that contributory provident fund account of such an employee in the previous college is continued as such in the subsequent college to which he is transferred or appointed and there is no break in service or service condition as modified by the Government from time to time. It appears to us that the aforementioned Rule 6(v) of the Rules is fully applicable to the case

of the petitioner. It remains un-disputed that the petitioner joined as a Director of Physical Education w.e.f. 16.7.1969 in Dev Samaj College for Girls, Ambala City, against a sanctioned post. Her appointment was approved by the Vice-Chancellor, Panjab University, Chandigarh, vide letter dated 24.9.1969 (P-3). She was confirmed w.e.f. 1.7.1972 vide letter dated 30.6.1972 (P-4). It has also been conceded by the respondents that grant-in-aid was granted to Dev Samaj College for Girls, Ambala City, till 1980 but she continued serving there till she was selected and appointed through proper channel against a sanctioned post of Director Physical Education in Hindu Girls College, Sonepat, on 3.8.1986 (P-5). Accordingly, she joined her duties on 6.8.1986 after having been relieved on 5.8.1986. She was confirmed in Hindu Girls College, Sonepat, on 6.8.1988, which was receiving grant-in-aid against the sanctioned post occupied by the petitioner, from the Department of Higher Education, Haryana. The petitioner retired from service on 30.9.2005 and at that time she was drawing super selection grade. The petitioner fulfil all the conditions postulated by Rule 6(v) of the Rules as her service from 16.7.1969 till 1980 at Dev Samaj College for Girls, Ambala City, has been rendered against a aided sanctioned post. Thereafter, she continued working at Dev Samaj College for Girls, Ambala City without any break. It was on 3.8.1986 that by a due selection process, she had joined on 6.8.1986 at Hindu Girls College, Sonepat, which again was receiving grant-in-aid in respect of the post occupied by the petitioner. She has retired from that post

on 30.9.2005 when she was drawing super selection grade. Accordingly, we hold that the period of service rendered by the petitioner from 16.7.1969 as Director Physical Education in Dev Samaj College for Girls, Ambala City, till 1980 has to be considered as qualifying service for the purposes of pension as the said college was receiving grant-in-aid in respect of the post held by the petitioner.

In view of the above, the writ petition succeeds. The order dated 22.9.2005 (P-11) is hereby quashed and a direction is issued to the respondents to grant to the petitioner benefit of service rendered by her from 16.7.1969 till 1980 by treating the same as qualifying service for the purposes of pension. However, the payment of contributory provident fund, which has been availed by the petitioner, shall be refunded by her to the respondents. Let revised pension be calculated and released to her after giving the benefit of service from 16.7.1969 till 1980, within a period of two months from the date of receipt of certified copy of this order.

The writ petition is disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)

December 1, 2006
JUDGE

dkb/Pkapoor